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Representing the United States

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA, Plaintiff, v. ERIC J. PARKER, et. al, Defendants.	2:16-CR-00046-GMN-PAL **GOVERNMENT'S RESPONSE TO DEFENDANT PARKER'S MOTION IN LIMINE (ECF No. 1436 and 1462)**

CERTIFICATION: This Response is timely filed. *See* LR IB 3-1(a).

The United States, by and through the undersigned, respectfully submits its Response to defendant Eric J. Parker's ("Parker") "motion in limine to exclude preclude introduction of photographs depicting defendants prone with weapons prejudicial internet evidence" (ECF No. 1439), filed on January 27, 2017. Parker's motion was joined by defendant Mel Bundy (ECF No. 1462).

Parker's motion lacks merit. Parker seeks to exclude photographs of himself Scott Drexler, and Steven Stewart that depict them using, carrying, brandishing, or pointing their firearms at law enforcement on April 12, 2104. Parker claims that federal law enforcement officers were unaware that he and his codefendants on the bridge were placing them in a position of harm, and thus he cannot be found guilty of Count Five, assaulting a federal officer, because the officers could not have been assaulted as a matter of law.

First, Parker's theory is essentially a premature Rule 29 motion. There will be ample evidence that law enforcement officers were aware of gunman on the bridge and that they had a reasonable apprehension of immediate bodily harm.

Second, assuming arguendo that officers never saw anyone on the bridge with firearms, the photographs would still be relevant and admissible. Parker is charged in two conspiracies, where the crime is the agreement itself. *See Salinas v. United States*, 522 U.S. 52, 64 (1997) ("A person, moreover, may be liable for conspiracy even though he was incapable of committing the substantive offense."). It is rather obvious that photographs of Parker aiming his long gun at federal law enforcement officers would be relevant evidence to the charge of conspiring to assault federal law enforcement officers and of conspiring to prevent by force, intimidation, or threats federal law enforcement officers from discharging their duties. It is also rather obvious that the photographs are relevant to remaining charges.[1] Furthermore,

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[1] Parker states that "[a]wareness or knowledge is required on the part of the victim for assault to be applicable: victim must have been aware that he/she was in a position of harm. Parker then states, without citation to authority, that "[b]y logical extension, this authority

Parker can be found guilty of Count Five under an aiding and abetting theory, and is rather obvious that the photographs are relevant to show that Parker acted with the intent to facilitate the crime of assault on a federal officer.

In short, the photographs are plainly relevant. *See United States v. Curtin*, 489 F.3d 935, 943 (9th Cir. 2007) (en banc) ("To be 'relevant,' evidence need not be conclusive proof of a fact sought to be proved, or even strong evidence of the same. All that is required is a 'tendency' to establish the fact at issue.").

WHEREFORE, for all the foregoing reasons, this Court should deny Parker's motion in limine (ECF No. 1436).

DATED this 7th day of February, 2017.

Respectfully,

DANIEL G. BOGDEN
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//s//

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applies to all alleged counts. That is clearly not the law. For example, under 18 U.S.C § 115, a defendant need not communicate the threat directly to the intended target.

CERTIFICATE OF SERVICE

I certify that I am an employee of the United States Attorney's Office. A copy of the foregoing **GOVERNMENT'S RESPONSE TO DEFENDANT PARKER'S MOTION IN LIMINE (ECF No. 1436 and 1462)** was served upon counsel of record, via Electronic Case Filing (ECF).

DATED this7th day of February, 2017.

/s/ Steven W. Myhre

STEVEN W. MYHRE
Assistant United State Attorney